

1 William D. Hyslop  
2 United States Attorney  
3 Eastern District of Washington  
4 Ann T. Wick  
5 Assistant United States Attorney  
6 Post Office Box 1494  
7 Spokane, WA 99210-1494  
8 Telephone: (509) 353-2767

9  
10 UNITED STATES DISTRICT  
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 CHRISTOPHER MICHAEL  
16 MERRILL,

17 Defendant.

Case No.: 2:19-CR-00152-WFN

Government's Sentencing  
Memorandum

18 Plaintiff, United States of America, by and through William D. Hyslop,  
19 United States Attorney for the Eastern District of Washington, and Ann T. Wick,  
20 Assistant United States Attorney for the Eastern District of Washington, submits  
21 memorandum setting forth the government's position at sentencing. The  
22 government recommends that the Court sentence the defendant to a term of  
23 imprisonment at the low end of the advisory guideline range, followed by greater  
24 than five years of supervised release.  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Defendant filed an objection only to special condition number one. ECF No. 73. Neither party's objection requires an adjustment to the sentencing guidelines calculations or advisory guideline range.

The Ninth Circuit has set forth a basic framework which the district courts should follow in compliance with the Supreme Court's ruling in *United States v. Booker*, 543 U.S. 220 (2005):

- Gov.'s Sentencing Memorandum – 2

are simply to be treated as one factor among the § 3553(a) factors that are to be taken into account in arriving at an appropriate sentence.

- (3) If a court decides that a sentence outside the guidelines is warranted, then it must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.
- (4) Courts must explain the selected sentence sufficiently to permit meaningful appellate review.

*United States v. Carty*, 520 F.3d 984, 991-92 (9th Cir. 2008).

## **SENTENCING CALCULATION**

### **I. Statutory Maximum and Minimum Sentence**

For Defendant’s conviction for receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2) and (b)(1), the Court must impose a term of at least five years, up to twenty years. PSR ¶ 92. The Court may impose up to a \$250,000 fine. ECF No. 98. The Court must impose a term of supervised release of at least five years, up to life. ECF No. 94.

### **II. United States Sentencing Guidelines Calculation**

“As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007).

#### **A. Offense Level Calculation**

The PSR correctly calculated the defendant’s total offense level as 34. PSR ¶ 41.

1                   B.     Criminal History Calculation

2                   The PSR correctly calculated the defendant's criminal history category as  
3  
4 Category I. PSR ¶ 58.

5                   C.     Advisory Guideline Range

6  
7                   Based upon a total offense level of 34 and a criminal history category of I,  
8 the advisory guideline imprisonment range is 151-188 months. PSR ¶ 93.

9  
10                                   **IMPOSITION OF SENTENCE**

11                   **I.     Imposition of a Sentence under 18 U.S.C. § 3553**

12                   A.     18 U.S.C. § 3553(a) factors

13  
14                   1.     The nature and circumstances of the offense

15                   The nature and circumstances of the defendant's offense warrant a  
16  
17 meaningful sentence of the type suggested by the advisory guideline range. Over  
18 the course of approximately three months –October 2017 to January 2018,  
19 Defendant shared with like-minded individuals a myriad of images and videos of  
20 child pornography. An undercover Homeland Security Investigations Special  
21 Agent – representing just one person able to obtain child pornography from  
22 Defendant – downloaded 75 images and 35 videos of child pornography from  
23 Defendant. ECF No. 64 at 4; PSR ¶ 13. The videos and images obtained from  
24 Defendant depicted prepubescent minor females as young as approximately 5 years  
25  
26  
27  
28

1 old, based on the representative sample described in detail in the PSR. PSR ¶¶ 14-  
2 16.

3  
4 Upon execution of a federal search warrant in February 2018, at Defendant's  
5 residence, where he resided with his parents, and seizure of Defendant's electronic  
6 devices, investigators located 224 images and 91 video files of child pornography,  
7 again including depictions of prepubescent minors and minors under the age of 12.  
8 ECF No. 64 at 4; PSR ¶ 17. Defendant spoke with agents, admitting that he  
9 intentionally downloaded child pornography, using search terms such as "pre-  
10 teen," "Mom and Dad," and "Family." PSR ¶ 18.

11  
12  
13  
14 Less than a year later, Defendant was back at it. Between January and  
15 September 2019, a special agent with the Federal Bureau of Investigation  
16 downloaded over 550 suspected child pornography files from Defendant. The two  
17 images and two video files visually reviewed by an agent were confirmed to be  
18 child pornography, depicting sadistic, masochistic, or other violent conduct. ECF  
19 No. 64 at 5. Federal agents again executed a search warrant at Defendant's  
20 residence (the same one), again seized devices, and again spoke with Defendant.  
21 *Id.*; PSR ¶ 20. Only three child pornography files were identified on Defendant's  
22 phone this time; however, Defendant again admitted to downloading and viewing  
23 child pornography and to using search terms such as "young," "underage," and  
24 "pre-teen." *Id.*

1 Within Defendant's collection of child pornography files (from both  
2 searches), 10 documented "Series" of child pornography were identified.  
3

4 2. The history and characteristics of the defendant

5 The defendant's history and characteristics support a low-end-guideline  
6 sentence. Although Defendant has zero criminal history points, he is not  
7 conviction free. The character of two convictions is notable: indecent exposure in  
8 1994, and lewd conduct in 1995. PSR ¶¶ 46, 49.  
9  
10

11 Defendant has also demonstrated a pattern of noncompliance with regard to  
12 court orders. PSR ¶¶ 7, 9. Defendant always has an excuse or explanation, telling  
13 a probation officer and the magistrate court, for example, that the reason he tested  
14 positive for methamphetamine was not because he used the illegal substance, but  
15 may have been due to inadvertent contact while cleaning his room. ECF No. 31-1.  
16 Yet, he admitted that did not see or touch methamphetamine while cleaning his  
17 room. *Id.* When he acquired a phone with internet access without permission, he  
18 actually had good cause to need the use of a smart phone; but he saw fit to acquire  
19 the phone first, not get the permission. ECF No. 49.  
20  
21  
22  
23

24 The pattern continued, with the conduct submitted to the Court in the  
25 government's Objection to Presentence Investigation Report, ECF No. 70. As  
26 evidenced by the text messages between Defendant and his former spouse, he  
27 wanted communication with his minor children, and he wanted his ex-wife to  
28

1 facilitate the communication. ECF No. 72 at 6-14. Defendant at least twice  
2 expresses bitterness and anger over his ex-wife not permitting the children to “call”  
3 or “talk” to him. *Id.* at 9-10. It also appears as though the minors have disclosed  
4 contact of some kind with Defendant during visitation with their grandparents.  
5 ECF No. 70 at 2; Attachment A.<sup>1</sup> This is despite two court orders<sup>2</sup> – one federal,  
6  
7  
8

---

9  
10 <sup>1</sup> Attachment A is a Report of Investigation documenting additional information  
11 from Defendant’s ex-wife and the children. *See* ECF No. 70 at 2 (referring to  
12 further information pending). It was provided to the defense in discovery and will  
13 be filed contemporaneous to this memorandum.  
14

15 <sup>2</sup> A violation of a no-contact order typically constitutes a crime. Thus, Defendant’s  
16 conduct could be a basis to deny him a reduction under USSG §3E1.1, not so much  
17 as a “pretrial violation” (ECF No. 73 at 6 n.11), but as the opposite of “withdrawal  
18 from criminal conduct.” §3E1.1 n. 1(B). Defendant’s text messages also at least  
19 hint at a denial of the conduct comprising the offense and/or a false denial of  
20 relevant conduct (ECF No. 72 at 10: “The plea [sic] report is wrong in there  
21 facts.”), another basis to deny a reduction for acceptance of responsibility. USSG  
22 §3E1.1 n. 1(A). However, as previously indicated, the government is not seeking  
23 an adjustment of the total offense level here and merely addresses it because of the  
24 question raised by Defendant in his Objection. *See* ECF No. 73 at 6 n.11.  
25  
26  
27  
28

1 one state, ordering Defendant to have no contact with the minors. ECF Nos. 22  
2 and 72 at p. 29.

3  
4 Because the contact did not appear to have been in person and was otherwise  
5 being handled by the minors' other parent, the government did not seek revocation  
6 of Defendant's pretrial release. Nevertheless, the conduct still bears on the Court's  
7 determination of an appropriate sentence to impose in this case, as well as  
8 imposition of conditions of release, which the government will address separately,  
9 later in this memorandum. What the conduct reveals, especially when taken in  
10 totality with Defendant's other pretrial release troubles, and Defendant's return to  
11 the same criminal conduct months after federal agents execute a warrant at his  
12 house, is that Defendant has trouble complying with Court directives and prefers to  
13 substitute his own judgment for that of the Court, his probation officer, and the  
14 law.

15  
16 A sentence within the advisory guidelines takes all of Defendant's personal  
17 characteristics and history into account.

18  
19  
20  
21  
22 3. The need for the sentence imposed to reflect the  
23 seriousness of the offense, to promote respect for the law,  
24 and to provide just punishment.

25 Crimes involving the sexual abuse or exploitation of a minor child are  
26 among the most, if not *the* most, serious crimes that can be committed. The fact  
27 that Defendant's crimes were committed over the computer does not let him off the  
28



1 hook for contributing to the exploitation of minors at the hands of others. Without  
2 people like Defendant, there is no demand for child pornography. Defendant's  
3 collection, alone, contained the visual record of the sexual abuse of 10 known  
4 "Series" victims. PSR ¶ 21. A sentence at the low end of the advisory guideline  
5 range recognizes this, promotes respect for the law, and is just punishment.  
6  
7

8 4. The need for the sentence imposed to afford adequate  
9 deterrence and to protect the public.

10 A guideline sentence serves the goal of general and specific deterrence.  
11 Defendant's sentence for indecent exposure did not deter him from his lewd  
12 conduct crime. PSR ¶¶ 46, 49. The sentence for the lewd conduct did not deter  
13 him from viewing and trading child pornography, nor did it deter him from years if  
14 illegal drug use, which is also criminal. PSR ¶¶ 74-78. The public is protected  
15 from Defendant's crimes while he is serving a custodial sentence and hopefully  
16 beyond, if he is successfully deterred from criminal activity by such sentence and  
17 takes advantage of rehabilitative programs and tools offered either in custody or in  
18 the community during a term of supervised release.  
19  
20  
21  
22

23 5. The kinds of sentences available

24 The Court may sentence defendant to a term of prison between five and 20  
25 years and impose of fine of up to \$250,000. The Court must impose a term of  
26 supervised release of at least five years.  
27  
28

1                   6.     The established sentencing range

2             Based upon a total offense level of 34 and a criminal history category of I,  
3  
4 the advisory guideline imprisonment range is 151-188 months. PSR ¶ 93.

5                   7.     The need to avoid unwarranted sentence disparities

6  
7             A guideline sentence would avoid unwarranted sentence disparities.

8                   8.     The need to provide restitution to any victims of the  
9                             offense

10            9.  
11             Defendant has agreed to pay restitution to the only victims who have  
12 submitted a restitution claim, in the amount of \$3,000 each. PSR ¶ 106; ECF No.  
13 64 at 10.

14  
15                   B.     Application of the Guidelines in Imposing a Sentence under  
16                             18 U.S.C. § 3553(b)

17             The government's within-guidelines recommendation is based in part on the  
18 fact that such a sentence properly reflects the accumulated wisdom and expertise of  
19 the Sentencing Commission, and serves the vital goal of uniformity and fairness in  
20 sentencing. The guidelines, formerly mandatory, now serve as one factor among  
21 several that courts must consider in determining an appropriate sentence.  
22

23  
24 *Kimbrough v. United States*, 552 U.S. 85, 90 (2007). It remains, however, that  
25 "the Commission fills an important institutional role: It has the capacity courts  
26 lack to base its determinations on empirical data and national experience, guided  
27 by a professional staff with appropriate expertise." *Id.* at 108-09 (internal quotation  
28

1 marks omitted). Thus, “the Commission’s recommendation of a sentencing range  
2 will ‘reflect a rough approximation of sentences that might achieve § 3553(a)’s  
3 objectives.’” *Id.* (quoting *Rita v. United States*, 551 U.S. 338, 350 (2007)).  
4

5       The guidelines are the sole means available for assuring some measure of  
6 uniformity in sentencing, thereby fulfilling a key congressional goal in adopting  
7 the Sentencing Reform Act of 1984. Reference to the guidelines, while carefully  
8 considering the § 3553(a) factors, is the only available means of preventing the  
9 disfavored result of basing sentences on the luck of the draw in judicial  
10 assignments. Therefore, “district courts must begin their analysis with the  
11 Guidelines and remain cognizant of them throughout the sentencing process.”  
12 *Gall*, 552 U.S. at 50 n.6.  
13  
14  
15  
16

17       The guidelines deserve significant respect. The government recognizes that  
18 the guidelines are entirely advisory, and that a district court has discretion to vary  
19 from an advisory range, subject only to deferential appellate review for  
20 reasonableness. A district court, however, must consider the guidelines range, *see*  
21 § 3553(a)(4), and is usually well-advised to follow the Sentencing Commission’s  
22 advice in order to assure fair, proportionate, and uniform sentencing of criminal  
23 offenders. Moreover, there are no other § 3553(a) factors in this case which  
24 mitigate against imposition of a sentence within that range; to the contrary, the  
25 § 3553(a) factors on balance support the imposition of the recommended  
26  
27  
28

1 guidelines sentence. Accordingly, the government recommends a sentence at the  
2 low-end of the advisory guideline range.  
3

4 C. The Facts of This Case Support Imposition of Special  
5 Condition #1 as a Term and Condition of Supervised  
6 Release.

7 Defendant has objected to special condition #1, which would restrict  
8 Defendant's contact with his minor children and require him to obtain permission  
9 from a probation officer before having such contact. ECF No. 73. In support,  
10 Defendant cites *United States v. Wolf Child*, 699 F.3d 1092 (9th Cir. 2012), but  
11 ignores individualized facts before This Court that support the condition here.  
12  
13

14 In imposing a condition like special condition #1 at the time of Defendant's  
15 pretrial release, Magistrate Judge Dimke rightly noted: "[A defendant's]  
16 fundamental liberty interest in familial association with his children . . . is not  
17 "absolute" and "must be balanced against the interests of the state, and when  
18 conflicting, against the interests of the children." ECF No. 22 at 4 (citing *Wolf*  
19 *Child*, 699 F.3d at 1092). Judge Dimke also rightly explained: "In order for the  
20 Court to impose limitations on this right, the Court's conditions must be  
21 substantively reasonable and must make an individualized examination of the  
22 defendant's situation." *Id.* (citing *Wolf Child*, at 1087-88). Proposed special  
23 condition #1 is indeed substantively reasonable, in light of the individualized facts  
24 present in this case.  
25  
26  
27  
28

1 As evident from Defendant's crime and statements he made to investigators,  
2 Defendant has a sexual interest in minor children. He was not merely collecting to  
3 collect, like a coin or stamp collector. Defendant was seeking out, viewing, and  
4 collecting images and videos of child pornography that he liked to watch, that he  
5 viewed for sexual pleasure. PSR ¶ 18. Defendant admitted to investigators that he  
6 would watch the child pornography videos that he downloaded and masturbate to  
7 them. *Id.* He also stated that he would delete some, but save others. *Id.*

11 Significant to the Court's individualized assessment of Defendant's situation  
12 is Defendant's preferred victim age. Defendant's collection is replete with images  
13 and videos of prepubescent minors and minors under the age of 12. The  
14 representative sample detailed in the PSR involves four girls, aged approximately 8  
15 to 11, 8 to 11, 10 to 12, and 5 to 7, engaged in sex acts with adult males. PSR  
16 ¶¶ 14-16. The file names were indicative of not only child pornography, but of the  
17 ages of victims depicted. *Id.* Furthermore, Defendant specifically sought out  
18 images of prepubescent minors, using "pre-teen" and "young" as search terms.  
19 PSR ¶¶ 18, 20.

24 Defendant's minor children are at specific risk for two primary reasons: 1)  
25 they fall within the age range of Defendant's desired child pornography material,  
26 both now and at the time of Defendant's offense (PSR ¶ 68); and 2) Defendant is  
27 specifically and sexually interested in incest. Defendant told investigators that he  
28

1 has fantasies about incest and has sought out “Mom and Dad” and “Family” child  
2 pornography. PSR ¶ 18. In addition, again as Judge Dimke highlighted in  
3 performing the same balancing test this Court must, the children are particularly  
4 vulnerable, Defendant has prior sex offenses, and Defendant went to great lengths  
5 to hide the child pornography crime and investigation from his former spouse.  
6 ECF No. 22 at 5-6. Thus, imposition of special condition #1 is supported by the  
7 individualized assessment of the facts and circumstances of this case. Defendant’s  
8 objection should be overruled.

### 12 CONCLUSION

13  
14 Application of 18 U.S.C. § 3553 supports a sentence at the low end of the  
15 advisory guideline range for Defendant’s commission of the crime of receipt of  
16 child pornography. The government submits that such a sentence is sufficient, but  
17 not greater than necessary, to accomplish the goals of sentencing, and that a lesser  
18 sentence is not supported by application of the 18 U.S.C. § 3553(a) factors

19  
20  
21 Respectfully submitted: September 3, 2020.

22 William D. Hyslop  
23 United States Attorney

24  
25 s/ Ann T. Wick  
26 Ann T. Wick  
27 Assistant United States Attorney  
28

